(b) *Assets.* (1) All assets to be acquired from the acquired person shall be assets held as a result of the acquisition. The value of such assets shall be determined in accordance with § 801.10(b).

(2)(i) If the acquiring person has signed a letter of intent or entered into a contract or agreement in principle to acquire assets from the acquired person, and

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired from the acquired person within the 180 calendar days preceding the signing of such agreement any assets which are presently held by the acquiring person, and the acquisition of which was not previously subject to the requirements of the act or the acquisition of which was subject to the requirements of the act but they were not observed, then for purposes of the size-of-transaction tests of Section 7A(a)(2) and for § 801.1(h), both the acquiring and the acquired persons shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this paragraph shall be determined in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person ''A'' proposes to make two acquisitions of assets from acquired person ''B,'' 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the size-of-transaction tests in Section 7A(a)(2), ''A'' must aggregate both of its acquisitions and must value each as of the time of its occurrence.

[43 FR 33537, July 31, 1978, as amended at 52 FR 7081, Mar. 6, 1987; 66 FR 8689, Feb. 1, 2001]

§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of Section 7A(a)(2) and § 801.1(h), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(a); and

(b) The value of all assets of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(b).

Examples: 1. Acquiring person ''A'' previously acquired $36 million of the voting securities (not convertible voting securities) of corporation X. ''A'' now intends to acquire $8 million of X's assets. Under paragraph (a) of this section, ''A'' looks to § 801.13(a) and determines that the voting securities are to be held ''as a result of'' the acquisition. Section 801.13(a) also provides that ''A'' must determine the present value of the previously acquired securities. Under paragraph (b) of this section, ''A'' looks to § 801.13(b)(1) and determines that the assets to be acquired will be held ''as a result of'' the acquisition, and are valued under § 801.10(b) at $8 million. Therefore, if the voting securities have a present value of more than $42 million, the asset acquisition is subject to the requirements of the act since, as a result of it, ''A'' would hold an aggregate total amount of the voting securities and assets of ''X'' in excess of $50 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. ''A'' now looks to § 801.13(b)(2) and determines that the previously acquired assets are not treated ''as part of the present acquisition'' because the second acquisition is of voting securities and not assets; thus, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act since the value of the securities to be acquired does not exceed the $50 million size-of-transaction test.

[43 FR 33537, July 31, 1978, as amended at 66 FR 8689, Feb. 1, 2001; 67 FR 11902, Mar. 18, 2002]

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§802.3, 802.4, 802.50(a), 802.51(a), 802.51(b) and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired.

Examples: 1. Assume that acquiring person ''A'' is simultaneously to acquire $51 million of the convertible voting securities of X and $12 million of the voting common stock of X. Since the overall value of the voting securities to be acquired (§801.1 defines convertible voting securities as ''voting securities'') is greater than $50 million, ''A'' must determine whether it is obliged to file notification and observe a waiting period before acquiring the securities. However, because §802.31 of this chapter is one of the exemptions listed in paragraph (a)(2) of this section, ''A'' would not hold the convertible voting securities as a result of this acquisition. Therefore, since as a result of the acquisition ''A'' would hold only the $12 million of common stock, the size-of-transaction tests of Section 7A(a)(2) would not be satisfied, and ''A'' need not observe the requirements of the act before acquiring the common stock. (Note, however, that the $51 million of convertible voting securities would be reflected in ''A'''s next regularly prepared balance sheet, for purposes of §801.11.)

2. In the previous example, the rule was applied to voting securities the present acquisition of which is exempt. Assume instead that ''A'' had acquired the convertible voting securities prior to its acquisition of the common stock. ''A'' still would not hold the convertible voting securities as a result of the acquisition of the common stock, because the rule states that voting securities the previous acquisition of which was exempt also fall within the rule. Thus, the size-of-transaction tests of Section 7A(a)(2) would again not be satisfied, and ''A'' need not observe the requirements of the act before acquiring the common stock.

3. In example 2, assume instead that ''A'' acquired the convertible voting securities in 1975, before the act and rules went into effect. Since the rule applies to voting securities the acquisition of which would have been exempt had the act and rules been in effect, the result again would be identical. If the rules had been in effect in 1975, the acquisition of the convertible voting securities would have been exempt under §802.31.

4. Assume that acquiring person ''B,'' a United States person, acquired from corporation ''X'' two manufacturing plants located abroad, and assume that the acquisition price was $160 million. In the most recent fiscal year, sales into the United States attributable to the plants were $40 million, and thus the acquisition was exempt under §802.50(a) of this chapter. Within 180 days of that acquisition, ''B'' seeks to acquire a third plant from ''X,'' to which United States sales of $12 million were attributable in the most recent fiscal year. Since under §801.13(b)(2), as a result of the acquisition, ''B'' would hold all three plants of ''X,'' and the $50 million limitation in §802.50(a) of this chapter would be exceeded, under paragraph (b) of this rule, ''B'' would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, ''B'' would hold assets of ''X'' exceeding $50 million in sales in or into the United States, would not qualify for the exemption in §802.50(a) of this chapter, and must observe the requirements of the act and file notification for the acquisition of all three plants before acquiring the third plant.

5. ''A'' acquires producing oil reserves valued at $400 million from ''B.'' Two months later, ''A'' agrees to acquire oil and gas rights valued at $75 million from ''B.'' Paragraph (b) of this section and §801.13(b)(2) require aggregating the previously exempt acquisition of oil reserves with the second acquisition. If the two acquisitions, when aggregated, exceed the $500 million limitation on the exemption for oil and gas reserves in §802.3(a), ''A'' and ''B'' will be required to file notification for the latter acquisition, including within the filings the earlier acquisition. Since, in this example, the total value of the assets in the two acquisitions, when aggregated, is less than $500 million, both acquisitions are exempt from the notification requirements. In determining whether the value of the assets in the two acquisitions exceeds $500 million, ''A'' need not determine the current fair market value of the oil reserves acquired in the first transaction, since these assets are now within the person of ''A.'' Instead, ''A'' is directed by

§ 801.13(b)(2)(ii) to use the value of the oil reserves at the time of their prior acquisition in accordance with § 801.10(b).

6. ''X'' acquired 55 percent of the voting securities of M, an entity controlled by ''Z,'' six months ago and now proposes to acquire 50 percent of the voting stock of N, another entity controlled by ''Z.'' M's assets consist of $150 million worth of producing coal reserves plus $47 million worth of non-exempt assets and N's assets consist of a producing coal mine worth $100 million together with non-exempt assets with a fair market value of $36 million. ''X's'' acquisition of the voting securities of M was exempt under § 802.4(a) because M held exempt assets pursuant to § 802.3(b) and less than $50 million of non-exempt assets. Because ''X'' acquired control of M in the earlier transaction, M is now within the person of ''X,'' and the assets of M need not be aggregated with those of N to determine if the subsequent acquisition of N will exceed the limitation for coal reserves or for non-exempt assets. Since the assets of N alone do not exceed these limitations, ''X's'' acquisition of N also is not reportable.

7. In Example 6, above, assume that ''X'' acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by ''Z.'' Assume also that M's assets at the time of ''X's'' acquisition of M's voting securities consisted of $90 million worth of producing coal reserves and non-exempt assets with a fair market value of $39 million, and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value of $28 million. Since ''X'' acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by ''Z,'' the assets of M and N must be aggregated, pursuant to §§ 801.15(b) and 801.13, to determine whether the acquisition of N's voting securities is exempt or whether it is reportable pursuant to the terms of § 802.4(c) of this chapter. ''X'' is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves under § 802.3(b) of this chapter. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when aggregated is greater than $50 million. Thus the acquisition of the voting securities of N is not exempt under § 802.4 of this chapter. If ''X'' proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non-exempt assets exceeds $50 million, the acquisition would not be exempt.

8. ''A'' acquired 49 percent of the voting securities of M and 45 percent of the voting securities of N. Both M and N are controlled by ''B.'' At the time of the acquisition, M held rights to producing coal reserves worth $90 million and N held a producing coal mine worth $90 million. This acquisition was exempt since the aggregated holdings fell below the $200 million limitation for coal in § 802.3(b) of this chapter. A year later, ''A'' proposes to acquire an additional 10 percent of the voting securities of both M and N. In the intervening year, M has acquired coal reserves so that its holdings are now valued at $140 million, and the value of N's assets remained unchanged. ''A's'' second acquisition would not be exempt. ''A'' is required to determine the value of the exempt assets and any non-exempt assets held by any issuer whose voting securities it intends to acquire before each proposed acquisition (unless ''A'' already owns 50 percent or more of the voting securities of the issuer) to determine if the value of those holdings of the issuer falls below the limitation of the applicable exemption. Here, the holdings of M and N now exceed the $200 million exemption for acquisitions of coal reserves in § 802.3 of this chapter, and thus do not qualify for the exemption of voting securities provided by § 802.4(a) of this chapter.

[43 FR 33537, July 31, 1978, as amended at 52 FR 7081, Mar. 6, 1987; 61 FR 13684, Mar. 28, 1996; 66 FR 8689, Feb. 1, 2001; 67 FR 11902, Mar. 18, 2002]

§ 801.20 Acquisitions subsequent to exceeding threshold.

Acquisitions meeting the criteria of section 7A(a), and not otherwise exempted by section 7A(c) or § 802.21 or any other of these rules, are subject to the requirements of the act even though:

(a) Earlier acquisitions of assets or voting securities may have been subject to the requirements of the act;

(b) The acquiring person's holdings initially may have met or exceeded a notification threshold before the effective date of these rules; or

(c) The acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Examples: 1. Person ''A'' acquires $10 million of the voting securities of person ''B'' before the effective date of these rules. If ''A'' wishes to acquire an additional $41 million of the voting securities of ''B'' after the